

## PART IV

### ADMINISTRATIVE PROCESSING OF CLAIMS, POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE

#### D. EVALUATION AND WEIGHING OF EVIDENCE

##### 9. VOCATIONAL EXPERTS AND EVIDENCE

Vocational evidence consisting of the testimony or report of a vocational or occupational expert is generally used where a party seeks to prove that claimant can perform comparable and gainful work. The party may introduce vocational evidence in that instance, but such evidence is not required where it has been shown that claimant can perform his usual coal mine work. **Ramey v. Kentland Elkhorn Coal Corp.**, 755 F.2d 485, 7 BLR 2-124 (6th Cir. 1985); **Director, OWCP v. Beatrice Pocahontas Co.**, 698 F.2d 680, 5 BLR 2-24 (4th Cir. 1983); **Central Appalachian Coal Co. v. Director, OWCP**, 679 F.2d 1086, 4 BLR 2-92 (4th Cir. 1982), *aff'g Fletcher v. Central Appalachian Coal Co.*, 1 BLR 1-980 (1979); see **Taft v. Alabama By-Products Corp.**, 733 F.2d 1518, 6 BLR 2-68 (11th Cir. 1984); **Sherry v. Tesone Coal Co.**, 4 BLR 1-377 (1982), *aff'd mem.*, 696 F.2d 985 (3d Cir. 1982).

The opinion of a vocational expert is clearly relevant to the issue of ability to perform comparable and gainful employment. **Byrne v. Allied Chemical Corp.**, 6 BLR 1-734 (1984). The vocational expert's opinion, however, must be based on a proper foundation. **Aleshire v. Central Coal Co.**, 8 BLR 1-70 (1985)(Smith, J., dissenting on other grounds). Additionally, the vocational evidence must address the miner's age, education, work experience, and the local availability of work to establish that the miner can perform comparable and gainful work. 20 C.F.R. §§410.412 and 410.426. See, e.g., **Central Appalachian Coal Co.**, *supra*.

#### CASE LISTINGS

[vocational expert's testimony insufficient to establish ability to perform comparable and gainful work where no personal knowledge of transferrable skills from claimant's previous employment or requirements of jobs he suggested claimant could perform offered] **Central Appalachian Coal Co. v. Director, OWCP [Fletcher]**, 679 F.2d 1086, 4 BLR 2-92 (4th Cir. 1982).

[Eleventh Circuit held that employer need not introduce vocational evidence in Part C

claim to establish Section 727.203(b)(2) on theory that miner able to do usual coal mine work] **Taft v. Alabama By-Products Corp.**, 733 F.2d 1518, 6 BLR 2-68 (11th Cir. 1984).

[rational for adjudicator to discredit vocational expert's report of comparable and gainful work based on 15 percent impairment indicated by 1974 West Virginia Pneumoconiosis Board report as outdated because 1977 report by same Board reflected 40 percent occupational pneumoconiosis] **McCune v. Central Appalachian Coal Co.**, 6 BLR 1-996 (1984).

[Sixth Circuit held vocational proof on issue of ability to perform comparable and gainful work not required under Part C under Section 727.203(b)(2) where shown that claimant able to do usual coal mine work; Court stated its decision in **Haywood v. Secretary of Health and Human Services**, 699 F.2d 277 5 BLR 2-30 (6th Cir. 1983) not applicable to this issue] **Ramey v. Kentland Elkhorn Coal Corp.**, 755 F.2d 485, 7 BLR 2-124 (6th Cir. 1985).

[vocational expert's opinion met the criteria set out in **Fletcher v. Central Appalachian Coal Co.**, 1 BLR 1-980 (1978), *aff'd sub nom. Central Appalachian Coal Co. v. Benefits Review Board*, 679 F.2d 1086, 4 BLR 2-98 (4th Cir. 1981), where testified that gainful jobs available within 80 minutes commuting distance of claimant's residence, that claimant is physically capable of performing these identified jobs, that positions comparable to former job as shuttle car operator, and that claimant's age would not be limiting factor] **Browning v. Central Coal Co.**, 8 BLR 1-51 (1985).

[adjudicator properly found vocational expert's opinion inadequate to establish ability to perform comparable and gainful work where it was vague, generalized and speculative] **Hardy v. Director, OWCP**, 7 BLR 1-722 (1985); see also **Aleshire v. Central Coal Co.**, 8 BLR 1-70 (1985).

## DIGESTS